IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.
INCOME TAX APPLICATION No. 191 of 2002

The Commissioner of I.T.
Mumbai City III ..Applicant.

Vs.

M/s Balsara Hygiene Products Ltd.
Mumbai .. Respondent.

Mr B. M. Chatterjee with Ms P. P. Bhosale for the Applicant.
Ms A. Visanji with S. P. Mehta for the Respondent.

CORAM:DR.S. RADHAKRISHNAN
AND V.C. DAGA,JJ.
DATED:25TH JUNE, 2007.

P.C.:-

1. Heard the learned counsel for the parties.

2. By this petition, the petitioner is seeking reference of the following two questions of law:-

1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the order of the learned CIT(A) in holding that the assessee is entitled to deduction u/s 32AB of the Income-tax Act and in directing the A.O. to allow the assessee such deduction?

2.Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the order of the learned CIT(A) in holding that the additions of Rs. 9, 58,000/- made by the A.O. on account of MODVAT credit and deleting the impugned addition?

3. As far as the first question is concerned, we have perused order of the Tribunal; wherein the Tribunal has found that the Assessing Officer disallowed the assessee's claim under Section 32AB of the Act on the ground that the assessee is not a small scale undertaking within the meaning of Section 80HHA of the Act. The CIT(A) allowed the claim of the assessee by following the Tribunal's decision in the asseessee's own case for assessment year 1982-83 in ITA No. 2451/Bom/1988.

4. In view of the same, the Tribunal relying upon the earlier decision in the assesse's own case and since it had not been shown that a reference on the first issue has been granted by the Tribunal for the earlier year, the finding of the Tribunal on this issue is a finding of fact and not a referable question of law.

5. As far as second question is concerned,we are of the opinion that no referable question of law arises.In the result, the application stands dismissed.

(V.C. DAGA,J.) **(DR.S. RADHAKRISHNAN,J.)**